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Gary A. Munneke

Pace Law School, gmunneke@law.pace.edu

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Race to the Finish Line: Legal Education, Jobs and the Stuff Dreams Are Made Of

By Gary Munneke

The Bad News

For much of 2011, the legal press and *blawgosphere* produced a non-stop litany of negative stories about the dismal job market for lawyers and the failings of legal education in the United States. These critics argued that the law school value proposition no longer worked for students, who assumed significant student loan burdens and then entered a job market where many would not find legal jobs that paid the bills and serviced their debt. Anecdotal evidence suggested that graduates could make ends meet only by going to work for the most prestigious, highest-paying firms, despite declining job opportunities in that sector. Law schools, it was suggested, actively misrepresented their job-placement statistics in order to sustain a bankrupt system of legal education, which did not prepare graduates for the practice of law or the realities of the job market they would encounter. Commentators further noted that, over the past two decades, the cost of legal education had increased faster than the rate of inflation.

GARY MUNNEKE (gmunneke@law.pace.edu) is Professor of Law at Pace Law School in White Plains, New York. He is Co-Chair of the New York State Bar Association Law Practice Management Committee.

It is true that the recession of 2008–2009 seriously undermined the job market for both new and experienced lawyers. It is also true that legal education is expensive, and many students pay for it through loans that have to be repaid after graduation. And it is well documented that some law schools misstated employment and other statistics in the tight, competitive job market of recent years. But connecting the dots in this case does not lead to a conclusion that our system of legal education is bankrupt or that law school is not an excellent career choice for many students. This article will attempt to re-connect the dots in a way that more accurately reflects contemporary legal education and the job market for lawyers.

I should disclose up front that I am a law professor at Pace Law School in White Plains. Some readers might be inclined to treat these comments as an apology for the status quo, but I have been an observer of the legal job market for almost 40 years and a frequent critic of traditional legal education in America. So when I say the writers and bloggers in the legal press have missed the mark in their criticism of legal education, it is not without recognizing that there is some merit in what they have to say. From where I sit, however, educators have done more to effectuate change than many critics will admit, and some of the fundamental emergent thinking about the future of legal education and the practice of law has come from the academy. What we need today is a cooperative dialogue among stakeholders in the legal market to forge a workable future. What we have is a stalemate, like two galleons firing broadsides in a Nathaniel Philbrick novel. This article is not only a plea for deans, professors, judges, practitioners, corporate counsel and bar leaders to talk, but also a blueprint for how to begin such a dialogue.

Jobs, Jobs, Jobs

Pre-2008

First, let's talk about the job market. I graduated in 1973 from a leading law school, yet I remember distinctly that the job market then was not all that great. The U.S. economy was struggling to emerge from a recession. The growth of large law firms that characterized the next quarter century and fueled a bull market for legal jobs was in its infancy. In those days, the top students were hired by the leading law firms (or joined those firms after clerking for a judge for one or two years), whereas students in the middle of the class scattered to a variety of different positions in small firms, government, corporations, and other concerns. A few of my classmates went on to graduate school or the military, and some chose to work outside the legal profession altogether. Although most of us thought that we would get the best jobs when we graduated, everybody knew that not everybody would get those jobs.

It has always been the case that not all law graduates will find employment with the highest-paying firms. Generally, the more elite the law school, the more likely are its graduates to snag those lucrative positions as associates in the largest firms. During the '80s and '90s, as the marketplace for legal services grew dramatically,

more students from more schools were hired by top-tier firms. We should not kid ourselves; even in those heady days, not all graduates got those jobs. And, on some level, law students in that era knew the same thing my classmates knew: not everyone would.

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Yes, the cost of legal education has risen astronomically since I was in law school. It is also true that the cost has increased in large measure because schools offered more clinics, more skills courses and smaller sections of traditional courses than they did when I was in law school. This does not negate the fact that it did get harder to pay for law school. Increasingly, students who lacked family financial resources have needed financial aid and loans in order to attend law school, and these loans have often been added to the burden of the loans that paid for undergraduate school. Even before 2008, observers lamented the fact that graduates could not afford to accept legal service and public interest jobs, because their student loans made such career choices infeasible – which again reminds us that the cost of legal education has been a growing issue for some time. Yet, many students did make the sacrifices needed to accept jobs in the public sector and in small Main Street firms that paid dramatically less than the salaries enjoyed by their Wall Street cousins. In fact, before the Great Recession, the overwhelming majority of graduates of most law schools did not go to work for BigLaw at big salaries.

The Great Recession

When the Great Recession arrived in 2008, it affected the legal job market in a number of ways. Large law firms cut back on hiring, rescinded offers, told people to travel the world for a year, laid off “unproductive” associates and partners, and outsourced legal work to less-expensive providers. Evidence suggests that smaller firms did not behave with such draconian abandon and instead elected to hunker down and tighten their belts until things got better. These firms did not bring on new associates or lateral partners, but they did not engage in the same kind of downsizing that characterized large firm hiring. As a result of decreased hiring throughout the legal marketplace, the law school classes of 2008 and 2009 found limited opportunities. Even as things got better in 2010 and 2011, new graduates found themselves in competition with grads from the previous two classes. The outlook for 2012 appears better than it has been for several years, but graduating law students remain nervous about their prospects.

They have reason to be nervous. Even though the job market has improved, it has not returned to its pre-2008 vigor. In the world of corporate practice, general counsel were scrutinizing outside legal costs with an eye toward reducing expenses. They increasingly refused to pay to train start-up lawyers who did not possess the skills to handle legal work on their own. Many general counsel (individually and collectively through the Association of Corporate Counsel) called for an end to the inefficient hourly billing model. They experimented with Alternative Fee Arrangements, outsourcing legal work and requests for proposal before awarding legal bids. Companies explored non-litigation dispute resolution alternatives to reduce costs and increase predictability. On top of all this experimentation, the economy hung like a dark cloud, and the cold, hard reality was that there was just less legal work to go around.

The Good News

Signs abound that the market for legal services is picking up, in concert with the general economy. Surveys and anecdotal reports tell us that there is once again more work for lawyers. It is not likely, however, that we will return to those halcyon days before 2008. The billable hour is equally inefficient in good times and bad, a fact well known to corporate counsel. New associates are no more practice-ready than they were before the recession. Some of the sheen has evaporated from the veneer of outsourcing – at least overseas – but the principle of contracting out work that can be done more economically seems rather recession-proof. Alternative dispute resolution is just as attractive in recovery as it was in recession. In short, corporate clients want a better deal, and we can expect them to pursue it.

In the world of individual and small-business representation, smaller firms have not experienced the same shakeout that has impacted the large-firm market. The threats to the viability of their firms have come more from online and non-legal service providers encroaching on work traditionally handled by lawyers, and pro se representation. To some extent, small firms and solo practitioners have faced increased competition from lawyers riffed by big firms, and by graduates who did not find employment in the large-firm market. The marketplace on Main Street has been more competitive than before the Great Recession, and the greatest shift has been the pressure to specialize in limited fields of practice in order to improve efficiency and profitability.

One other phenomenon affecting the legal job market (and which has gone largely unreported) is the increasing use of permanent staff by law firms of all sizes. In the past, most firms were divided into two classes of lawyers: partners and associates. Partners could leverage the work of associates to improve profitability. Firms were organized in such a way that, over time, associates were weeded out (or they left of their own volition), and some

who stayed were eventually elevated to partnership. For whatever reason, losses in the associate ranks created new entry-level openings, and new law school graduates stood ready to fill those vacancies.

Now, however, a number of firms have eliminated the up-or-out system, converting experienced associates into “non-equity partners,” “of counsel,” “staff lawyers” or “permanent associates.” By doing so, law firms could continue to leverage the expertise of these lawyers and save on the recruiting and training costs associated with hiring new lawyers. Thus, if the associates who go in do not go out, then there will be fewer new jobs for those eager to come in.

The point is that the economic model for law firms has been changing, and these changes often result in less entry-level hiring. The recent recession masked this evolution, because the faltering economy also produced a decline in job openings. What we will see, however, in the coming years as the economy improves is that law firms, going forward, will not look like law firms of the past. This trend is likely to be most pronounced in larger firms, but it will have an impact on small-firm hiring as well. To the extent that there is less hiring in large firms, more graduates can expect to earn lower salaries.

The Jobs Forecast

The American Bar Foundation reports that approximately 65% of all lawyers work in the private practice of law, and of these 20% (or 13% of all lawyers) work in large firms. The largest segment of the marketplace belongs to solo practitioners who account for more than 40% of all those in private practice (or 26% of all lawyers). Employment statistics for recent graduates are comparable, except that the number of graduates who go directly into solo practice has traditionally been less than 5% – although many lawyers become solos at some point in their careers. During the recession, fewer graduates found work in law firms and more decided to hang out a shingle. As the economy improves, the number of graduates who open their own practice will probably return to pre-recession levels, although law firm hiring will not reach pre-recession highs. This suggests two important developments in the job market.

First, more entry-level lawyers will earn salaries on the lower end of the spectrum. If the employment pattern projected above comes to pass, slightly more graduates will find themselves in the same situation as more than half of the graduates today, and before the Great Recession. With respect to graduates who go to work for small firms, government agencies, not-for-profits and other organizations, anecdotal evidence suggests that they do pay their bills and repay their loans. Chicken Littles who cry that it cannot be done are simply wrong. Thousands of law school graduates have been following this path for years. It may not be as easy to get by when you are making \$60,000 compared to \$160,000, but somehow you do it, and you survive.

As a profession, we should be working to create and support programs that permit restructuring of student loans and provide for loan forgiveness for graduates who accept public service/public interest jobs that pay less money. We should remind ourselves that one unchanged statistic over the past four decades (and probably more) is that 80% of the people in the United States do not have a regular lawyer, and many individuals either cannot afford a lawyer or do not have access to legal services. The same thing is true for many small businesses. There is plenty of legal work to go around; we need to find ways to fund these unmet legal needs. Creative ideas and helpful information on this topic are discussed in this *Journal* by Peter Giuliani, “The Long and Winding Road Ahead,” and Silvia Hodges, “Winning Legal Business From Small and Mid-Sized Companies.” Joel Rose offers guidance for law firms that want to plan proactively to address issues affecting the future of their organizations, in “Strategies for Planning a Retreat: A Case Study.”

Second, those who claim that there are not enough legal jobs to go around fail to understand that the job market for lawyers is incredibly elastic, because a law degree is incredibly malleable and flexible. In the early 1970s, the ABA created a Task Force on Professional Utilization to study what it called the “oversupply of lawyers.” The thinking was that law schools were spewing out so many graduates that the legal job market could not absorb them. The final report of the Task Force concluded that while not all graduates could find work in law firms (especially the most prestigious ones), they did find work. Graduates also went to work in non-legal and non-law-related jobs in business, industry, government, education, private associations, NGOs, and virtually every other conceivable work environment. Every form of human endeavor encounters legal issues, and lawyers, whether they are practicing law or not, can address those legal issues. And lawyers bring with them a skill set that can be applied in a variety of different settings.



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What the Task Force found was that the job market could absorb law school graduates – when there were fewer law firm jobs, more lawyers pursued alternative careers; and vice versa. One might argue that if you are not going to practice law, why should you go to law school? The answer is that a legal education provides training that will give you an advantage in the job market – both in getting the job and performing the job. What the Task Force discovered in the 1970s remains true today.¹

There is no evidence that people will stop coming to law school, nor is there evidence that they should. Statistics indicate that law school applications tend to increase when the job markets for college graduates decline. Moreover, human nature being what it is, no one applying to law school actually believes that *he* will not find a job – and the best job for that matter. Every 1L *knows* that she will graduate at the top of the class, become editor-in-chief of the law review and get the best-paying job. This is not an argument against giving applicants a true and accurate picture of what their job opportunities really are; it is a suggestion that they will come to law school in any event, because they want to become lawyers.

This takes us back to law schools. What is their role in the evolving business model for law firms? Does a traditional three-to-four-year Socratic curriculum, which teaches graduates to think like lawyers, suffice to prepare law graduates for the realities of the world they will enter? Have law schools become unsustainably expensive?

Law schools must change, just as law firms must change. They must do a better job of preparing students for the practice of law without sacrificing the traditional benefits of legal education. They must find ways to deliver legal education more cost-effectively. They must serve as incubators for improving the practice of law, and they must collaborate with practitioners in finding answers to problems.

Interestingly, and unknown to most practitioners, a great deal of rumination is going on behind the ivy-covered walls of the nation's law schools. The 2012 meeting of the Association of American Law Schools (AALS) was rife with programming that would have been considered heresy only a decade ago. The American Bar Association (ABA) Section of Legal Education and Admissions to the Bar is undergoing a thorough re-examination of the Standards for the Approval of Law School. Curricular experimentation and reform is happening at all law schools – even those most hidebound by tradition. Legal educators are thinking about how legal education needs to change and how to make it more affordable. Deans and professors take seriously the criticisms that have been leveled by critics of legal education. Law schools are responding to the pressures of the marketplace, and re-thinking historical dogma.

Just as it is with law firms, this process is not easy. There is no broad consensus or clear path as to what the

law school of the future will actually look like, just as there is no certainty about what the law firm of the future will look like. Like their counterparts in private practice, however, academic lawyers are grappling with the issues. Both practitioners and academics need to realize that we are all in the same boat, and that we need to work together to find workable models for the profession as a whole. If lawyers do not find ways to improve legal education, the quality and cost of legal services, access to justice and public perception of the law, service providers from outside the profession will marginalize the legal profession in the business world, a possibility suggested by Richard Susskind in his book *The End of Lawyers?*

The New York State Bar Association Task Force on the Future of the Legal Profession addressed the questions of legal education, law firm structure, billing practices, technology and life-work balance in a report adopted by the House of Delegates in April 2011. The Report led to a resolution adopted by the ABA House of Delegates, calling on law schools to produce more “practice-ready” lawyers and, more recently, to change bar examination requirements, which would, among other things, permit law students to take more classes in legal skills than before. Albany Law School is sponsoring a conference in March, in Albany, on new teaching models in legal education.² These initiatives reflect similar efforts in a number of states and professional organizations around the country.

Lawyers may not be able to change economic cycles, alter global trends or shift societal mores and behavior. Lawyers may not be able to see the future – even the short-term future – with clarity. The fact that we cannot predict or control what lies ahead, however, is no justification for ignoring the future, for sticking our heads in the sand and hoping that it will just go away. Futurists often talk about alternative futures, suggesting that the “future” is not some preordained path that humans are forced to follow. Rather, the future comprises an infinite number of paths, and humans have the power to influence some things, which will determine the alternative future that comes to pass. Evidence exists that global warming is real, but there are things we can do to affect this trend. Lawyers may not be able to control the economic cycle that drives the market for legal jobs, but they can make structural changes in the organizations where they work to survive and thrive in good times and bad. Lawyers, whether they work in law firms or law schools or other settings, can anticipate change in a proactive way, rather than wait for change to occur and then try to react. As a profession, we need to talk more to other parts of the profession, and listen to voices outside the law, in order to effectively manage this change. ■

1. See Munneke, Henslee and Wayne, Nonlegal Careers for Lawyers (ABA 2007), available at <http://www.ababooks.org>.

2. Center for Excellence in Law Teaching at Albany Law School, March 29 – 30, 2012.

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